IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.6745 OF 2005

Smt.Mridula V. Rathi and others)..Petitioners

Versus

Ramgopal Gupta (since deceased) through)
Neelkumar Gupta)..Respondent

Mr.Uday Warunjikar i/b.A.K.Saxena for the Petitioners.

Mr.Bharat Mehta for the Respondent.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 19TH OCTOBER 2005

P.C.:

. The impugned order has been passed on 26th August 2005 by the Appellate Bench of the Small Causes Court refusing to stay the execution proceedings filed by the landlord against the Petitioners. A stay of the proceedings was sought under Section 10 read with Section 51 of the Code of Civil Procedure, 1908, contending that in a Suit filed before the City Civil Court, the Petitioner had challenged the consent decree passed by the Small Causes Court in LE&C Suit No.50/62 of 1991. That consent decree, according to the Petitioner, was obtained by fraud and, therefore, a Suit has been filed in the City Civil Court being S.C. Suit No.373 of 1994.

2. A Suit was then filed in this Court under Section 6 of the Specific Relief Act against the Respondent to put the Petitioner back in possession of the suit premises. That Suit being Suit No.1434 of 1996 is still pending in this Court. Notices of Motion Nos.1545 of 1996 and 1399 of 2002 were taken out by the Petitioners, who are Plaintiffs in that Suit. By consent of the parties, this Court vide paragraph 1(i) passed the following order on 30th September 2005 :

> "(i) In so far as Notice of Motion No.1545 of 1996 is concerned, Learned counsel for the defendant makes a statement on receiving instruction from his client, that the defendant will not in any manner interfere with the use, occupation and possession of the premises which is presently in occupation of the plaintiff being Cabin No.7 and part of Cabin No.3 till the hearing and final disposal of the suit."

3. After the consent decree was passed on 23rd May 1991, Petitioner No.3 filed a Writ Petition in this Court being Writ Petition No.5292 of 1993. One of the prayers in that Writ Petition was for a declaration that the consent decree should be set aside as it was obtained by fraud. Another prayer that the warrant of possession should not be executed against the Petitioner, his wife who is Petitioner No.1 in the present Petition, his minor children and his mother was

also sought. The said Writ Petition was dismissed on 28th March 1994 by passing the following order :-

> ". In the present case, the Court below has come to the conclusion that the Consent Decree dated 23rd May 1991 was passed in accordance with the law; that there was nothing to indicate fraud as alleged by the Petitioner herein; that in the Application made under Order 23 C.P.C. by the Petitioner there was no allegation of fraud or coercion made out and in any event there is nothing to indicate that fraud was practised on the Petitioner. Essentially these are questions of fact. I have also gone through the application made under Order 23. There is no whisper of fraud alleged in the said application. In any event the Consent Application dated 23rd May, 1991 has been signed on the letter-head of the Petitioner. The Consent praecipe was presented to the Trial Court and accordingly, the Consent Decree came to be filed. In the above circumstances, there is no merit in the above Writ Petition.
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> . Writ Petition stands rejected."

4. This order was challenged by the Petitioners in the Supreme Court vide Special Leave to Appeal No.13577 of 1994 and the said Special Leave to Appeal was dismissed on 10th November 1994.

5. The Petitioners are obstructing the execution of the decree and, therefore, Obstructionist Notice was taken out by the Plaintiffs. Interim Notices No.2377 of 2005 and 2378 of 2005 were taken out by the Petitioners for stay of Appeal No.221 of 2003 and Revision Application Nos.32 and 71 of 1996 respectively till the

final disposal of the cases pending in this Court and the City Civil Court. The Appellate Court, in my view, has rightly dismissed these Interim Notices. All aspects of the matter have been properly considered by the Appellate Court. The prayers sought in the Suit pending before the City Civil Court and the Small Causes Court are different. The reliefs sought before the Small Causes Court cannot be granted by the City Civil Court or this Court. In my view, Section 10 of the Civil Procedure Code has no application at all and, therefore, there is no need to stay the execution proceedings. Besides the Appeal has been pending for two years while the Revision has been filed in the year 1996.

6. However, in view of the order passed by this Court in Notice of Motion No.1545 of 1996 and Notice of Motion No.1399 of 2002, in the event the Appeal and Revision Application are decided by orders adverse to the Petitioners, the orders will be implemented only after seeking liberty from this Court in Suit No.1434 of 1996. Petition rejected.